

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ALVERY LOUIS HORTIZ, III,

Petitioner,

vs.

DAVE DORMIRE,

Respondent.

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**Case number 4:05cv1763 ERW
TCM**

MEMORANDUM AND ORDER

Pending in this 28 U.S.C. § 2254 action is the motion of petitioner, Alvery Louis Hortiz, III, for the appointment of counsel. [Doc. 15]

There is no constitutional or statutory right to appointment of counsel in habeas corpus proceedings. See **Morris v. Dormire**, 217 F.3d 556, 558 (8th Cir. 2000); **McCall v. Benson**, 114 F.3d 754, 756 (8th Cir. 1997); **Hoggard v. Purkett**, 29 F.3d 469, 471 (8th Cir. 1994). "[I]nstead, [the appointment of counsel] is committed to the discretion of the trial court." **McCall**, 114 F.3d at 756 (alterations added). In considering whether to appoint counsel, the factual and legal complexity of the case and the petitioner's ability to investigate and articulate his claims should be considered. **Morris**, 217 F.3d at 558-59. Moreover, where the issues involved can be properly resolved without an evidentiary hearing, the court does not abuse its discretion in denying a request for appointment of counsel. See **Hoggard**, 29 F.3d at 471.

Petitioner raises nine grounds for habeas relief from his life sentence without the possibility of probation or parole followed by three consecutive thirty-year terms of imprisonment. He raises these grounds succinctly and articulately. Respondent argues that

with the exception of one allegation of ineffective trial counsel, all grounds have been presented to and rejected by the Missouri Court of Appeals and that each is without merit. The exception of one of the ineffective assistance of trial counsel was not raised on appeal from the denial of Petitioner's post-conviction motion and is, Respondent further argues, procedurally barred.

At this stage of the proceedings, the issues raised in the petition appear to be neither factually nor legally complex and also appear to be appropriate for resolution without an evidentiary hearing. Moreover, the petition demonstrates an ability to articulately and appropriately advocate Petitioner's position. Accordingly,

IT IS HEREBY ORDERED that Petitioner's motion for appointment of counsel is **DENIED**. [Doc. 15]

/s/ Thomas C. Mummert, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 22nd day of August, 2006.